No. 270.

Brief of Hughes for P. in E.

The Supreme Court

Filed Apr. 1, 1897.

OF THE

UNITED STATES.

OCTOBER TERM, 1896.

W. H. BLACKBURN,
Plaintiff in Error,

VERSUS

THE PORTLAND GOLD MINING COMPANY, AND W. S. STRATTON,
Defendants in Error.

BRIEF OF PLAINTIFF IN ERROR.

CHARLES J. HUGHES, Jr.,
Attorney for Plaintiff in Error.

THE R. J. HUGHES PRESS, LEADVILLE, COLORADO.

IN

The Supreme Court

OF THE

UNITED STATES.

OCTOBER TERM, 1898.

W. H. BLACKBURN,

Plaintiff in Error,

VERSUS

THE PORTLAND GOLD MINING COMPANY, AND W. S. STRATTON,

Defendants in Error.

BRIEF OF PLAINTIFF IN ERROR.

Statement of Case.

The plaintiff in error, the plaintiff below, brought his action against The Portland Gold Mining Company and W. S. Stratton, defendants, alleging that the amount in dispute, exclusive of interest and costs, exceeded the sum of two thousand dollars; that it was a suit between citizens of different states in this that the plaintiff was a citizen of the

State of Colorado; the defendant, The Portland Gold Mining Company, was a citizen of the State of Iowa, and the defendant W. S. Stratton, a citizen of the State of Colorado; that the suit was of a civil nature, and arose under the laws of the United States; that among the questions of the construction of said statutes, arising and necessary to be determined and adjudicated, were the following:

That the suit was an adverse suit and arose under the provisions of sections 2325 and 2326 of the Revised Statutes of the United States, being known as a suit in support of an adverse claim in this, to wit, that the defendant, W. S. Stratton, applied for patent for a portion of the Fairplay lode mining claim under the provisions of section 2325 of the Revised Statutes of the United States, and the plaintiff, under and by virtue of section 2326 of the Revised Statutes of the United States, filed his adverse claim and protest against the entry of the Fairplay claim upon the ground that a part thereof was held and owned by him as part and parcel of the Eacho lode mining claim, and that said suit was in support of that adverse and protest; that W. S. Stratton, about the fourth of February, 1897, made application in the United States land office at Pueblo, Colorado, for patent on said portion of Fairplay lode mining claim, under section 2325 of the Revised Statutes of the United States, and at that time he was not the real owner nor did he have any interest or title whatsoever therein; that long prior to such time the said Stratton had, by good and sufficient deed, con-

veyed all his title to the defendant, The Portland Gold Mining Company, which company, on the fourth day of February, 1897, was and ever since has been the real owner and in actual possession of said claim, and for that reason the action is brought against The Portland Gold Mining Company, jointly with said Stratton.

Then follows an allegation of the location of the Echo lode mining claim, and the claim of the plaintiff to occupy and possess it in compliance with the laws of the United States as a lode mining claim located on the public domain of the United States, and the allegation that on the fourth day of February, 1897, the defendant wrongfully and unlawfully entered into and upon a portion of the said claim, and made application for patent, that plaintiff in due time filed adverse and protest against the issuance of such patent, that the suit was brought within thirty days after the filing of the adverse, and judgment was demanded that the plaintiff be adjudged the owner and entitled to the ground in controversy, for the sum of one thousand dollars damages, and three hundred dollars for expenses in behalf of the adverse claim, and for costs of suit (printed record, pages 1–3).

The defendants filed a motion to dismiss the complaint upon the ground: (1) that the court had no jurisdiction, either of the parties, or of the subject matter of the suit; (2) that both the plaintiff and the defendants in said suit were citizens of the State of Colorado, that the same was not wholly between citizens of different states; (3) that it does not appear in said complaint that the

amount in controversy in said suit was two thousand dollars; and (4) that it appears in said complaint that the suit is one which under the Constitution and statutes of the United States can not be tried in that court (printed record, pages 5–6).

The third ground of the motion was withdrawn at the argument, the court sustaining the motion to dismiss (printed record, pages 6–7).

The court did not file an opinion in the case, and hence the plaintiff in error was not able to comply with the rule of this court requiring the same to be filed herein. The grounds upon which the motion was sustained were that an adverse suit was not a suit such as was within the jurisdiction of the United States court; and that the said Stratton was not such a nominal party that his citizenship might be ignored in determining the jurisdiction of the federal court on the ground of diversity of citizenship.

ASSIGNMENT OF ERRORS.

I.

The court erred in sustaining the motion of defendants below.

II.

The court erred in deciding that an adverse suit, or suit brought in support of a protest and adverse—under the provisions of section 2325 and section 2326 of the Revised Statutes of the United States, did not raise a federal question and confer federal jurisdiction.

III.

The court erred in deciding that W. S. Stratton was not a nominal party, and that the making of said Stratton a party defendant defeated or ousted the jurisdiction of the federal court.

IV.

The court erred in ruling that the Federal Court had no jurisdiction of the cause stated in said complaint.

V.

The court erred in dismissing the plaintiff's complaint.

VI.

The court erred in not dismissing the action as to W. S. Stratton, defendant, the resident of Colorado, and proceeding with the action against The Portland Gold Mining Company, defendant, the non-resident of the State of Colorado.

(Record, pp. 5–6.)

I.

The motion to dismiss should not have been sustained, since the objection to the jurisdiction of the court could not be raised in that manner, but by demurrer or plea in abatement.

Hoyt *et al.* v. Wright, 1 McCrary, 130; 4 Fed. Rep., 168.

Clarkhuff v. Wisconsin, etc., Co., 26 Fed. Rep., 465.

Black's Dillon on Removal, Sec. 215.

II.

Plaintiff in error contends that the interest of Stratton in connection with the litigation was of such a nature that his being joined as a party defendant did not prevent the action being one between citizens of different states, to wit, between the plaintiff, a citizen of the State of Colorado, and The Portland Gold Mining Company, a citizen of the State of Iowa. An examination of the record discloses that Stratton had conveyed all his title and interest, of every kind and nature in the Fairplay claim to The Portland Gold Mining Company, and that at the time the adverse suit was brought Stratton had no interest in the claim but that the application for patent was being prosecuted by and for the defendant, The Portland Gold Mining Company. Stratton had been an owner, the date of the termination of his title is shown to have been prior to the fourth of February, 1897. This suit was instituted on the twenty-seventh of August, 1897 (printed record, page 1), and adverse was filed on the twenty-eighth day of July, 1897, (printed record, page 3).

Stratton was upon the record in the suit only because of his connection with the original application for patent. His ownership having ended, he had no interest in the controversy between the plaintiff and the defendant, The Portland Gold Mining Company, and he was therefore, under the facts disclosed in the complaint, a nominal party only. Under the decisions therefore, the jurisdiction of the United States court upon the

ground of diversity of citizenship was not defeated by his presence upon the record.

Arapahoe County v. Kas. Pac. Ry. Co., 4 Dill., 277.
Walden v. Skinner, 11 Otto, 577.
McNutt v. Bland *et al.*, 2 How., 9.
Brown v. Strode, 5 Cranch, 303.
Coal Co. v. Blatchford, 11 Wall., 172–177.
Irvine v. Lowrie, 14 Peters, 298.
Bannafee v. Williams, 3 How., 574.
Beebe v. Louisville, etc., Co., 39 Fed. R., 481.
Belding v. Gaines, 37 Fed. R., 817.
Collins v. Wellington, 31 Fed. R., 244.
Nelson v. Hennessy, 31 Fed. R., 113.
May v. St. John, 38 Fed. R., 770.
Myers v. Nelson, 43 Fed. R., 695.
Brown v. Nelson, 46 Fed. R., 614.
Juda v. Iowa Barbed Wire Co. *et al.*, 32 Fed. R., 561.
Black's Dillon on Removal of Causes, section 76, 77.
Henderson v. Cabel, 43 Fed. R., 257.
Rickman v. Rickman, 1 Fed., 587.
Dunton v. Muth *et al.*, 45 Fed. R., 390.
Hoyt *et al.* v. Wright, 1 McCrary, 130; 4 Fed. R., 168.
Clarkhuff v. Wisconsin, etc. Co., 26 Fed. R., 465.

III.

The action is one arising under the laws of the United States and therefore cognizable in the fed-

eral ccurt, and the motion should have been denied. The right to institute this action is created by a federal statute; without this statute, this mode of procedure, this very action, this cause of action, would have had no existence. The plaintiff's right to bring the action is conferred by the statute, as was the right to file the adverse, in support of which said action was brought. The whole procedure in the land office and in the courts is a creature of federal legislation.

An adverse suit is a part of the proceedings in the land office for the obtaining of title to government land. It is a reference from the land office, made because the land office has not the powers of a court to compel the attendance of witnesses, nor officers to enforce its orders. In many respects an adverse suit differs from an ordinary suit. The time for presenting it is not determined by the statute of limitations, or other laws of the forum, but by the United States statute, fixing it at thirty days.

The cases of Mars v. Oro Fino M. Co., 65 N. W. Rep., 19, and Steves v. Carson, 42 Fed. Rep., 321, were dismissed for failure to bring suit within the time limited by the Federal statute, thirty days, when, if they had been ordinary cases, a cause of action in ejectment would have been maintained. The dismissal was because it was an action brought under and controlled wholly by the United States statutes.

It is essential that the parties state that the adverse was filed during the period of publication, or within sixty days from the application for

patent; and further, that the suit was brought within thirty days.

Mattingly v. Lewishon, 19 Pac. Rep., 310.

The ordinary verdict found under the statute in an ejectment case is not sufficient, but a special finding must be made, which is then sent back to the land office for its guidance.

These differences, and others, are illustrated in the following cases:

Perego v. Dodge, 163 U. S., 160.
Rockwell v. Graham. 9 Colo., 36.
Doherty v. Morris, 11 Colo., 12.
People *ex rel.* Darby v. District Court, 19 Colo., 343.

Keeler v. Trueman, 15 Colo., 146, holds that actions of this character are purely statutory.

Marshall Silver Mining Co. v. Kirtley, 12 Colo., 410, holds:

"The allegations in the complaint that the action is brought in support of an adverse claim, must be held as determining the character and object of the action."

Michael v. Mills, 22 Colo., 439, holds that certain instructions, otherwise immaterial,

"Ought to have been given, for this action is not an ordinary action to recover the possession of real property, but in effect, involves the validity of the respective locations under the mining law."

Citing—

Becker v. Pugh *et al.*, 9 Colo., 589.

In the case of Perego v. Dodge, 163 U. S., 160, Chief Justice Fuller, after reviewing the proceed-

ings for patent, filing of the adverse, and the bringing of an adverse suit, said:

"The determination of the right of possession between the parties is referred to a court of competent jurisdiction in aid of the land office;"

And again said:

"The whole proceeding is merely in aid of the land department; and the object of the amendment was to secure that aid as much in cases where both parties fail to establish title as where judgment was rendered in favor of either."

Becker v. Pugh, 9 Colo., 589, holds:

"No one can read it and not arrive at the conclusion that the suit was brought under an adverse, filed to contest defendant's application for patent for the premises in controversy, and that the purpose of the pleader was to put in issue and try questions which, by section 2326 of the Revised Statutes of the United States are submitted to the court for adjudication."

Manning v. Strehlow, 11 Colo., 451-455, holds:

"This is not an action under the statutes of the state to determine the mere question of the right of possession, but an action authorized by the laws of Congress to determine the rights of a party to be invested with the fee."

Bennett v. Harkrader, 15 Supreme Court Reporter, 863; 158 U. S., 441, holds:

"Again, in this action, brought under a special statute of the United States in support of an adverse claim, but one estate is involved in the controversy. No title in fee is or can be established. That remains in the United States; and the only question presented is the priority of right to purchase the fee. Hence, the inapplicability of a statute regulating generally actions for the recovery of real estate, in which actions different kinds of title may be sufficient to sustain the right of recovery. It would be pure surplusage to find in terms a priority of the right to purchase when that is the only question that can be litigated in such statutory action. If the plaintiff owns the fee, he is not called upon to file an adverse claim, or commence such an action, and the statute providing therefor has no application. Mining Co. v. Campbell, 135 U. S., 286."

Doe v. Waterloo Min. Co., 43 Fed. Rep., 219, holds:

"The proceedings here in question are purely statutory, and they had their inception, not in the court in which the suits were commenced, but, as said by the Supreme Court in Wolverton v. Nichols, 119 U. S., 488; 7 Sup. Ct. Rep., 289, by the assertion of the defendant's claim to have the patents issue to it for the land in controversy. The next step was the filing of an adverse claim by the plaintiff in the land office, and the present suits are 'but a continuation of those proceedings, prescribed by the laws of the United States, to have a determination of the question as to which of the contesting parties is entitled to the patents. The act of Congress requires that the certified copy of the judgment of the court shall be filed in the land office, and shall be there conclusive. And we must keep this main purpose of the action in view in any decision made with regard to the rights of the parties.' In that case, a statute of Montana, where the case arose, provided for the bringing of an action by any person in possession, by himself or his tenant, of real property, against any persons claiming an adverse interest therein, for the purpose of determining such adverse claim. A nonsuit was granted by the District Court, and affirmed by the Supreme Court of the territory, upon the ground that the plaintiffs were not in possession of the property at the time of the bringing of the suit; but the Supreme Court held that as the suit was brought pursuant to the provisions of sections 2325 and 2326 of the Revised Statutes, the view taken by the territorial court of the local statute was too restricted, and accordingly reversed the judgment. * * * I am of opinion that these suits are special statutory proceedings, which, in the absence of a statutory provision that there shall be a jury trial in them, belong, from their nature, on the equity side of the court. Not only is the right the court is required to determine not the appropriate subject of an action at law, but the sole purpose of its judgment is for the guidance of the land department. No writ of any nature issues for its enforcement, but a certified copy of it is required to be filed by the officers of the land department, and they required to act in accordance with it. Congress saw proper to refer contests for mineral lands to the courts for trial; but it need not have done so. It could have directed such contests to be tried by the officers of the land department, just as contests respecting pre-emption claims and rights are required to be tried."

The case of Campbell v. Ellett, 167 U. S., 116, was taken by writ of error from the Supreme Court of Colorado, apparently for no other reason than that it was an adverse case, as no diversity of citi-

zenship appears in the case. In the report below, 18 Colo., 510, the following appears on page 511:

"The appellant, Alfred S. Ellett, was plaintiff below, and, by his guardian, brought this suit in the District Court, in support of an adverse claim to a certain mineral lode or vein, situate in Gold Hill mining district, Boulder County, Colorado;"

And on page 518, the following:

"In determining the controversy thus presented it is necessary to consider, interpret, and if necessary, construe the statutory enactments applicable to the discovery and location of mineral lodes."

In the same case, in 167 U. S., Mr. Justice Brewer, after giving a history of the location of the claim, says:

"Having made an application for a patent, the defendant in error filed an adverse claim and commenced a suit, as required by the statute. United States Revised Statutes, 2326."

The rights which are asserted by the plaintiff and defendant, both in the land office and in the litigation, arise out of federal legislation concerning the disposition of property belonging to the government of the United States, and in the litigation concerning it and on it the disposition of the property of the government the United States is directly concerned. Since the act of 1881, there is presented in the trial of every adverse case, the question whether the plaintiff, the defendant or the *United States* shall be adjudged to be the owner of the land in controversy. We have, then, the title to be asserted, dependent upon a federal statute with reference to the disposition of the public domain of the United States, and requiring a construction of federal statutes prescribing the acts to be performed and the methods to be fol-

lowed in acquiring title thereto. We have also a jurisdiction conferred upon United States land offices for the purpose of disposing of government lands and settling disputes between rival claimants thereto, and as between both claimants thereto and the United States. There is further, the machinery of the courts authorized and controlled by the same United States statutes. It would seem impossible to conceive an action more clearly cognizable in the federal court than the adverse suit here brought. When we turn to decisions in analogous cases, we fine it uniformly held that in such cases the federal courts have jurisdiction.

The exact question here presented has been decided in this circuit by Justice Miller, sitting upon the Circuit Court bench, in the cases of The Frank G. and S. Min. Co. v. The Larimer M. and S. Co., 1 Colo. Law Reporter, 491; 1 Morrison Min. Reports, 150, 151; 8 Fed. R., 724. In an adverse case, upon a motion to remand when it had been removed to the federal from the state court, because it was an adverse case, Justice Miller said:

"The defendant made application for patent for a mining claim in Lake county, to resist which plaintiff filed in the land office an adverse claim, and thereupon filed complaint in the District Court for Lake county. Defendant, after answer, filed a petition for removal of the cause to the Circuit Court of the United States, on the ground that the subject matter of the action arises under the laws of the United States, and the case was removed accordingly.

"This hearing is a motion to remand the cause to the state courts for trial. The act of Congress of March 3, 1875, provides that the 'United States Circuit Courts shall have original jurisdiction of the subject matter of all cases arising under the constitution and laws of the United States.' It is impossible that such an action as this can be determined without reference to, and involving a construction of the mining laws of Congress. The questions involved necessarily arise under the laws of the United States; and hence this court has original

jurisdiction of the subject matter of the action, and the case was properly removable. The motion to remand must be denied."

It has also been well said that the cause of action would not have existed, and the action itself could not have been brought but for the authorization thereof by the federal statutes.

In the case of Rutter *et al.* v. Shoshone Mining Co. 75 Fed. R., 37, Judge Beatty, rendering the opinion, said:

"This action is in pursuance of section 2326, Revised Statutes, and is based upon an adverse claim by complainant to the application of defendant for patent to mining ground. All except two of the several causes of demurrer to the original complaint are cured by the amended complaint, which complainants are permitted to file. In the remaining causes are involved the questions (1) whether such suits arise under the laws of the United States, and (2) whether they are at law or in equity.

"It seems settled by the authority of several Circuit Court decisions that such cases are within the jurisdiction of the United States courts. In the last case upon the subject, Burke v. Concentrating Co., 46 Fed., 644, the question was directly raised, and was fully considered and decided by Judge Sawyer. Defendant now cites Bushnell v. Smelting Co., 148 U. S., 682, as holding a contrary view. While this was a suit of the nature provided for by section 2326, it was commenced and tried in the state court, where the only question for decision was as to the course of a ledge. The first attempt to suggest a federal question was by a petition in the state Supreme Court for rehearing, and the United States Supreme Court says this was too late to be considered, even if a federal question were involved in the case. It also says that the question turned largely upon the construction of a state statute prescribing the width of mining locations. While there is some intimation only, not a declaration, that the pleader must specially plead some facts showing that a federal question is involved, the decision seems to rest solely upon the procedure had in the state court, which was for the settling of a single fact that in no way involved the construction of any United States statute."

This case was appealed to the Circuit Court of Appeals for the ninth circuit, where it was affirmed by Judges Hawley, District Judge, and

Ross, Circuit Judge; Gilbert, Judge, dissenting. See case of Shoshone Mining Co. v. Rutter, reported in 87 Federal Reporter, at page 801, from which we quote as follows:

[Syllabus.]

1. ADVERSE CLAIMS TO MINING LAND—JURISDICTION—FEDERAL QUESTION.

"A suit brought in pursuance of Revised Statutes, section 2326, based upon an adverse claim made upon the filing of an application for a patent for mining ground, is a suit arising under the laws of the United States, and is within the jurisdiction of the Circuit Court. 75 Fed., 37, affirmed.

OPINION.

"HAWLEY, District Judge. This is a suit in equity brought under the provisions of section 2326 of the Revised Statutes to determine the rights of the respective parties to certain mining ground situated in Yreka mining district, Shoshone county, Idaho. On August 21, 1895, appellant applied for a patent to the Shoshone lode claim. Appellees thereafter filed their protest and an adverse claim against said application, and in due time commenced this suit in support of their claim in the Circuit Court of the United States for the district of Idaho. Both parties are citizens and residents of the State of Idaho. A demurrer was interposed to the complaint, and overruled by the court. (75 Fed., 37.) The cause thereafter came to issue, was tried upon its merits, and resulted in a decree in favor of the appellees. The questions presented by the demurrer will be first considered:

"'1. Appellant claims that the Circuit Court had no jurisdiction to try the case. Does the complaint in this case show upon its face that the suit is one arising under the laws of the United States? This question, under the repeated decisions of the courts in this and other circuits, has been, so far as we are advised, universally answered in the affirmative. Different grounds have been stated and different reasons assigned by the various courts, but the conclusion has always been the same—that the Circuit Courts of the United States have jurisdiction to try all cases instituted under and by virtue of the provisions of section 2326 of the Revised Statutes, independent of the question of citizenship of the respective parties. (Frank G. and S. M. Co. v. Larimer M. and S. Co., 8 Fed., 724; Cheesman v. Shreve, 37 Fed., 36; Doe v. Mining Co., 43 Fed., 219; Strasburger v. Beecher, 44 Fed., 209, 213; Burke v. Mining Co., 46 Fed., 644, 646; Wise v. Nixon, 76 Fed., 3, 6.) But it is argued by appellant's counsel that all of these decisions have been virtually overruled by the decision of the Supreme Court in the case of Bushnell v. Mining Co., 148 U. S., 682, 13 Supreme Court, 771. As we

understand the decision in that case, no such question as is here presented was there raised, discussed or decided. That action was brought in the state court, tried in the state court, and an appeal was taken to the Supreme Court of the state; and after a petition for rehearing was filed, the losing party for the first time suggested that a federal question was involved, to wit, a construction of section 2322 of the Revised Statutes. The petition for rehearing being denied, a writ of error was sued out, and the case taken to the Supreme Court of the United States. The writ of error was there dismissed on the ground—to quote the language of the decision:

" 'The attempt to raise for the first time a federal question in a petition for rehearing, after judgment, even assuming that the petition presented any such question, is clearly too late. It has been repeatedly decided by this court that a federal question, when suggested for the first time in a petition for rehearing, after judgment, is not properly raised, so as to authorize this court to review the decision of the highest court of the state.'

"No question was raised as to the competency of the courts, either national or state, to try a case brought under the provisions of section 2326. The only question at issue there, under the pleadings and at the trial, was as to the true course of the lode or vein. The instructions referred to in the opinion had reference to that question only, which was solely a question of fact; and the court said that no federal question was involved—that is, that no question was raised which called for any construction of section 2322. The other decisions that we have cited go directly to the point raised in this case. In Burke v. Mining Co., 46 Fed., 644, 646, the Court said:

" 'It is claimed on one side, and denied on the other, that this suit, having been brought to determine the title to a mining claim, in pursuance to the requirements of section 2326 of the Revised Statutes, as amended in March, 1881 (1 Supp. Rev St., p. 609), is for that reason a suit arising under the laws of the United States, within the meaning of the statute giving jurisdiction on that ground, irrespective of the character of the questions involved in the litigation. It seems to us that all the authorities, as they now stand, have determined the question in favor of the affirmative of this proposition.'

"In Jackson v. Roby, 109 U. S., 440, 3 Sup. Ct., 301, which was a suit brought in the Circuit Court of the United States for the district of Colorado, in support of an adverse claim under the provisions of section 2326 of the Revised Statutes, the Court disposed of the case upon its merits, and it is certainly fair to assume that it had no doubts as to its jurisdiction in the premises. In Chambers v. Harrington, 111 U. S. 350, 4 Sup. Ct., 428, it was claimed that a judgment rendered in a suit brought under the provisions of section 2326 of the Revised

Statutes was not subject to review in the Supreme Court. The Court said:

"'But it is apparent that the statute requires a judicial proceeding in a competent court. What is a competent court is not specifically stated, but it undoubtedly means a court of general jurisdiction, whether it be a state court or a federal court; and as the very essence of the trial is to determine rights by a regular procedure in such court, after the usual methods, which rights are dependent on the laws of the United States, we see no reason why, if the amount in controversy is sufficient in a case tried in a court of the United States, or the proper case is made on a writ of error to a state court, the judgment may not be brought to this court for review, as in other similar cases.'

"The proceedings required to be commenced, under the provisions of section 2326, in a court of competent jurisdiction, may be brought either in the state or national courts, at law or in equity, as the facts may warrant; but section 2326 does not confer any special jurisdiction on the state courts. When the suits are brought and tried in the state courts, they are subject to the provisions of the state statutes in relation to such cases, and the courts proceed in the manner prescribed by such statutes. The proceedings in the national courts are regulated by the provisions of section 2326, as will more fully appear in the consideration of the next question involved herein. In several Pacific Coast states, statutes have been passed for the purpose of supplementing the provisions of section 2326, and the cases, when tried in the courts of such states, are controlled by such statutes, independent of any other provisions of the state statutes. Rose v. Mining Co., 17 Nev., 25, 52, 27 Pac., 1105; 2 Lindl, Mines, sections 754, 755, and authorities there cited. In Steel v. Mining Co., 18 Nev., 87, 1 Pac., 450, the Court said:

"'These actions may be brought by the plaintiff, whether he is in or out of possession of the mining ground in controversy; and the only sensible construction of the law is that each party must prove his claim to the premises in dispute, and that the better claim must prevail.'

"Now, if there were no statute of the state specially providing for the trial of this class of cases, it might be that the state courts would not be able in all cases to try questions required to be heard and determined by section 2326, as amended. But, be that as it may, our conclusion is that, upon reason and authority, the circuit courts of the United States have jurisdiction to hear and determine the respective rights of the parties in controversies arising under the provisions of section 2326, if the property in controversy exceeds in value the sum of $2,000, independent of the question of the citizenship of the respective parties, or of the fact as to whether or not the case presents any federal question involving the construction of any other provisions of

the laws of the United States. In other words, that a circuit court of the United States is 'a court of competent jurisdiction' to try such cases, within the meaning of those words as used in said statute."

The decision of a case by one of the Circuit Courts of Appeal of the United States, until reversed by the Supreme Court, should be followed by the Circuit Courts in another circuit.

Fairfield Floral Co. v. Bradbury, 87 Fed. Rep., 415.

From the foregoing case we quote as follows:

[Syllabus]

"In general, the courts of one circuit should follow the decisions of the Court of Appeals in another circuit, where the point in question has not been passed upon by the Supreme Court."

Opinion by PUTNAM, Circuit Judge:

* * * *

"If I were to follow my own judgment, I should say that Congress, neither directly nor through the Postmaster General, or anyone else, has any constitutional authority to impose the penalty of forfeiture of the use of the mails of the United States, at least without a trial. But I am not sure that I will be able to follow my own convictions in this case, even if on a final hearing they remain as they now stand. I am not sure that I will not be bound by the decision of the Court of Appeals in the sixth circuit (Association v Zumstein, 15 C. C. A., 153, 67 Fed., 1000), when the case comes to a final hearing. My own view is, that the decisions of the Court of Appeals in one circuit should ordinarily be followed quite implicitly by the courts in other circuits. The case in the sixth circuit does not seem to have been taken to the Supreme Court. I cannot find anything to indicate that it was taken up by writ of error or otherwise, and it seems to have been left on the decision of the Court of Appeals; so that it stands today the highest judicial authority which we have on the validity of the statute."

Under the above ruling, it was error for Judge Hallett to dismiss this bill.

In Burke *et al.* v. Bunker Hill and S. Mining and Concentrating Co., 46 Fed. R., 644, there is a

full and able discussion of the entire question here presented, by Circuit Judge Sawyer, with whom sat in that decision District Judge Beatty. It is not merely upon the question, but is a full discussion of the authorities relating to it; and especially is there well preserved the effect of the statute of 1881, being the amendment to section 2326 of the Revised Statutes of the United States, found in 1 Sup. Rev. St. U. S., 609.

Judge Sawyer, among other things, says:

"It seems to us that all the authorities, as they now stand, have determined the question in favor of the affirmative of this proposition. Thus the point was directly decided on the circuit on a motion to remand, this being the only point of the motion, by Mr. Justice Miller of the Supreme Court, in Frank G. and S. M. Co. v. Larimer M. and S. Co., 8 Fed. Rep., 724. A like decision was made by Justice Brewer, then circuit judge, in Cheesman v. Shreve, 37 Fed. Rep., 36. So the same ruling was made by Knowles, J., in Strasburger v. Beecher, 44 Fed. Rep., 213. Says the judge:

"'As to this suit, I am clearly of the opinion that it is one which arises under the laws of the United States. It is a suit instituted in pursuance of the provisions of section 2326 of the Revised Statutes of the United States. (See Frank G. and M. Co. v. Larimer M. and S. Co., 8 Fed. Rep., 724.) One of the objects of such an action is to determine who is entitled to a patent to the premises in dispute. The judgment is filed in the United States land office on the determination of the action. To some extent the United States is a party to the action. (See Jackson v. Roby, 109 U. S., 440.) This decision must be based upon the theory, it appears to me, that the action, pursuant to an adverse claim, has for one of its objects the determination as to whether either party has divested the United States of the possessory title to the premises in dispute.'

"That is to say, it is not only intended to determine the rights of the two parties as between themselves, but also as between each of the parties and the United States, so as to determine finally whether either party has so far performed the conditions prescribed by the statute, as to entitle him to pay for the mine and receive a patent from the United States, thereby making the United States substantially, though not formally, a party to the suit and entitled

to have their rights determined in the national courts. This idea is supported by the amendment to section 2326 of 1881 (1 Sup. Rev. Stat., 609), which provides as follows:

"'That if, in any action brought pursuant to section 2326 of the Revised Statutes, title to the ground in controversy shall not be established by either party; the jury shall so find, and judgment shall be entered according to the verdict. In such cases costs shall not be allowed to either party, and the claimant shall not proceed in the land office or be entitled to a patent for the ground in controversy until he shall have perfected his title.'

"It would seem that, under section 2326, as it originally stood, when a party applied for a patent to a mine, and there was an adverse claimant, the parties were referred to the ordinary courts to determine in the usual actions, applicable to the cases, the rights of the adverse claimant only as between themselves; such as an action to recover possession when out of possession, and a suit to determine an adverse claim when in possession, the question between the successful party and the government being left to the determination of the commissioner of the land office. But the amendment seems designed to change the whole proceedings, and refer, not only the question of the rights of the parties as between themselves, but also, without making the United States formally a party, to transfer the whole matter, as between the United States and the successful party to the courts, thereby making the United States, substantially, though not formally, parties to the suit; and on that ground, it would seem, that the United States are entitled to have their rights determined in the national courts. Jackson v. Roby, 109 U. S., 444, and Wolverton v. Nichols, 119 U. S., 485, seem to support the idea, also, that not only the rights of the parties as between themselves, but also the rights as between the parties, respectively, and the United States, are to be conclusively determined. These rulings cited from the Federal Reporter appear to be sustained by the Supreme Court of the United States in Chambers v. Harrington, 111 U. S., 350, where the Supreme Court entertained an appeal, apparently, because it was an action brought under section 2326, Revised Statutes. (See also, Doe v. Mining Co., 43 Fed. Rep., 219.) Whatever we might think, were this a case of first impression, arising under section 2326 before its amendment, we do not feel at liberty now, to question the ruling of so many cases decided by eminent judges, and by the United States Supreme Court, as we understand their decisions. We therefore hold, upon these

authorities, that the record shows a case for national jurisdiction, as arising under the laws of the United States, for the reason that it was brought in pursuance of the requirements of section 2326 as amended, and therefore, it is not within the decisions of Trafton v. Nouges, 4 Sawy., 178, and Water Co. v. Keyes, 96 U. S., 199, and cases following these decisions. These jurisdictional facts all appear in the pleadings and are not required to be otherwise shown in the request, or petition, to transfer to this court."

Con. Wyo. Co. v. Champion M. Co., 62 Fed., 945.

As also sustaining these views, although not upon the direct question here presented, we quote from—

NORTHERN PAC. R. CO. *v.* COLBURN (164 U. S., 383).

[Syllabus.]

"1. A decision by the Supreme Court of a state adverse to a claim of title by a railroad company under a congressional land grant, involves a federal question."

HUSSMAN *v.* DURHAM (165 U. S., 144).

[Syllabus.]

"1. A decision of the Supreme Court of a state denying the validity of an equitable title, apparently conveyed by proceedings in the United States land office, and of tax titles based thereon, involves a federal question."

Mr. Justice BREWER says:

"A motion to dismiss was submitted by the defendant in error, but, as the Supreme Court of the state held that the equitable title apparently conveyed by the proceedings in the United States land office in 1858, was of no effect, and the tax titles based thereon of no validity, it is apparent that a right claimed under the *authority of the United States* was denied, and therefore this court has jurisdiction."

Ex Parte LENNON (166 U. S., 548).

[Syllabus.]

"2. A bill by one railroad company against another and its employes to enforce the interstate commerce act by enjoining defendants from refusing to receive plaintiff's cars, presents a case arising under the constitution and laws of the United States. 12 C. C. A., 134, 64 Fed., 320, affirmed."

OPINION.

(By Justice BROWN.)

"Irrespective of this, however, we think the bill exhibited a case arising under the constitution and laws of the United States, as it appears to have been brought solely to enforce a compliance with the provisions of the interstate commerce act of 1887, and to compel the defendants to comply with such act, by offering proper and reasonable facilities for the interchange of traffic with complainant, and enjoining them from refusing to receive from complainant, for transportation over their lines, any cars which might be tendered them. It has been frequently held by this court that a case arises under the constitution and laws of the United States, *whenever the party plaintiff sets up a right to which he is entitled under such laws*, which the parties defendant deny to him; and the correct decision of the case depends upon the construction of such laws. As was said in Tennessee v. Davis, 100 U. S., 257, 264: 'Cases arising under the laws of the United States are such as grow out of the legislation of Congress, whether they constitute the right or privilege, or claim or protection, or defense of the party, in whole or in part, by whom they are asserted.' See also Starin v. City of New York, 115 U. S., 257; 6 Sup. Court, 28; Kansas Pac. R. Co. v. Atchison, T. & S. F. R. Co.; 112 U. S., 414; 5 Sup. Court, 208; Ames v. State of Kansas, 111 U. S., 462; 4 Sup. Court, 437; Railroad Co. v. Mississippi, 102 U. S., 135."

SPOKANE FALLS & N. RY. CO. *v.* ZEIGLER (167 U. S., 65).

[Syllabus.]

"1. Though a complaint by a settler claiming title under the pre-emption laws of the United States against a railroad company, states that defendant claims under the laws of the territory of Washington authorizing railroad companies to appropriate land for right of way, it discloses a cause of action arising under the laws of the United States, so as to authorize a removal from a state court to the federal court, the court having judicial knowledge that the authority of the territory to legislate as to the matter in question is derived from the act of Congress of March 3, 1875 (18 Stat., 482), granting to railroad companies the right of way through the public lands of the United States."

OPINION.

(By Justice SHIRAS.)

"Whether it would be competent for the plaintiff in error, in the circumstances stated, to challenge the jurisdiction of the Circuit Court at this stage of the controversy, we need not consider, because we think that the plaintiff's statement did disclose a cause of action arising under the laws of the United States, and cognizable by the Circuit Court.

"In his complaint, the plaintiff alleged that on May 1, 1889, he was in possession, as a pre-emptor under the laws of the United States, of a tract of land containing about 80 acres, and on said date had made all the improvements, and had lived on the land a sufficient length of time, and had done all other acts necessary to entitle him to a patent to the same from the United States, that the defendant company, being a corporation of the territory of Washington, on said date entered upon and seized a strip of land 50 feet in width, and appropriated it for railroad purposes, without the consent of the plaintiff, and without having compensated him therefor; and that the entry upon and seizure by the defendant of the land was under and pursuant to the laws of the territory of Washington, authorizing railroad companies to appropriate lands for right of way for railroad tracks.

"We have judicial knowledge that the authority of the territory to legislate in respect to the right of a territorial railroad corporation to enter upon the public lands of the United States, was derived from the act of Congress entitled, 'An act granting to railroads the right of way through the public lands of the United States,' approved March 3, 1875 (18 Stat., 482), whereby the right of way through the public lands of the United States was granted to any railroad company duly organized under the laws of any state or territory.

"The plaintiff's complaint, therefore, discloses the case of a contest between a settler claiming title under the laws of the United States and a railroad company claiming a right under an act of Congress, and of such a case the Circuit Court for the district of Washington clearly had jurisdiction. Doolan v. Carr, 125 U. S., 620; 8 Sup. Court, 1228; Cooke v. Avery, 147 U. S., 375; 13 Sup. Court, 340."

CALIFORNIA NAT. BANK *v.* KENNEDY (167 U. S., 362).

[Syllabus.]

"1. Where a national bank is sought to be charged as stockholder in another corporation, the averment in its answer that the stock was issued to it 'without authority of law,' must be construed as referring to the law of the United States governing national banks, and therefore raises a federal question."

OPINION.

"Mr. Justice WHITE, after stating the case, delivered the opinion of the court.

"Before discussing the merits, we will briefly consider and dispose of a suggestion that no federal question appears by the record to have been properly raised below, and therefore there is a want of jurisdiction in this court to review the judgment. The answer averred that, if any stock of the savings bank appeared to have been issued to the national bank, it was 'issued without authority of this corporation

defendant, and without authority of law.' In view of the fact that the defendant was a national bank, deriving its powers from the statutes of the United States, the averment that a particular transaction of the character of the one in question, if entered into, was without authority of law, can, in reason, be construed only to relate to the law controlling and governing the conduct of the corporation; that is the law of the United States. But, if there were ambiguity on this subject, it is entirely removed by the grounds which were presented on the motion for a new trial and the specifications of error which form the basis of the appeal which was taken to the Supreme Court of the State of California, for in both the motion and specifications the want of power under the laws of the United States was clearly asserted. The Supreme Court of the state interpreted the case brought to it from the court below as presenting the question of the power of the corporation, under the law of the United States, to become a stockholder in a savings bank, for in the opening sentence of its opinion, it said:

'The California National Bank, one of the defendants, has appealed upon the ground that, by virtue of the statutes under which it is organized, it had no power to become a stockholder in another corporation, and that its act in becoming such stockholder is so far *ultra vires* that it cannot be made liable for any portion of the indebtedness of the corporation.'

"The suggestion as to the want of jurisdiction is therefore without merit.

"The federal questions which therefore arise on the record may be thus stated: (1) Do the statutes of the United States (Rev. St., sec. 5136 *et seq.*) relating to the organization and powers of national banks prohibit them from purchasing or subscribing to the stock of another corporation? And (2) if a national bank does not possess such power, can the want of authority be urged by the bank to defeat an attempt to enforce against it the liability of a stockholder?"

NEW ORLEANS M. AND T. R. CO. *v.* MISSISSIPPI (102 U. S., 135–144.)

[Syllabus.]

* * * * * *

"2. A suit in a state court brought by the state against a railroad company to procure the removal of a railroad bridge across a navigable river, in which the defendant, in support of its right to construct and maintain the bridge across such river, invokes the protection of an act of Congress, is a case arising under the laws of the United States, and is removable from the state into the federal court.

COOKE *v.* AVERY (147 U. S., 375).

"While, under this section and section 967, judgments recovered in federal courts were liens in all cases where they were such by the

laws of the states, these sections did not recognize any right in the states to regulate the operations of federal judgments; and, in a case where the laws of the state respecting the liens of judgments were changed after the enactment of these sections into the Revised Statutes, the question whether a judgment thereafter recovered in a federal court constituted a lien upon land was one which depended upon a construction of the federal laws and rules of court, and was therefore a question of federal jurisdiction."

AMES *v.* KANSAS. KAN. P. R. CO. *v.* KANSAS (111 U. S. 449).

[Syllabus.]

"2. Where the whole purpose of a suit in a state court is to test the validity of the consolidation of certain railroad companies, which rests alone on the authority conferred for that purpose by acts of Congress, the case arises under the laws of the United States within the meaning of the acts as to the removal of causes."

OPINION.

"That the validity of the consolidation, so far as the state is concerned, rests alone on the authority conferred for that purpose by the acts of Congress, is not denied. If the acts of Congress confer the authority, the consolidation is valid; if not, it is invalid. Clearly, therefore, the cases arise under these acts of Congress, for, to use the language of Chief Justice Marshall in Osborn v. United States Bank, 9 Wheat., 825, an act of Congress 'is the first ingredient in the case, is its origin, is that from which every other part arises.' The right set up by the company, and by the directors as well, will be defeated by one construction of these acts, and sustained by the opposite construction. When this is so, it has never been doubted that a case is presented which arises under the laws of the United States. Cohens v. Va., 6 Wheat., 379; Gold Washing and Water Co. v. Keyes, 96 U. S., 201 (XXIV., 658); R. R. Co. v. Miss., 102 U. S., 140 (XXVI., 98).

KANSAS PACIFIC R. CO. *v.* ATCHISON ETC., R. R. Co. (112 U. S., 414)

[Syllabus.]

"3. A controversy arises upon laws of the United States, where two corporations claim title to the same land under sufferent acts of Congress, and the decision depends upon the construction given to those acts."

OPINION.

"The controversy in this case arises upon laws of the United States. As far back as Cohens v. Va., decided more than sixty years ago, it was said that a case may be considered to arise under the Constitution or a law of the United States whenever its correct decision depends upon the construction of either; 6 Wheat, 379. The same thing is expressed by the statement that a case arises under the Constitution or laws of the United States whenever the rights set up by a

party may be defeated by one construction or sustained by the opposite construction. Osborn v. Bank, 9 Wheat., 738. Here both corporations claim title to the same land in Kansas under different acts of Congress and the decision depends upon the construction given to those acts. It is, therefore, clear that the court below had jurisdiction of the subject of the suit and of the parties."

DOLAN *v.* CARR (125 U. S., 618).

[Syllabus.]

"Where the controversy in an action turns upon the validity of a patent from the United States, under which plaintiff claims title, in ejectment, which is denied by defendant, the Circuit Court has jurisdiction of the case, although no citizenship of either party is alleged."

OPINION.

"No citizenship of either party is alleged, and this is urged as a ground of reversal in this court, to which the case has been brought by a writ of error. It, however, appears very clearly that the controversy turns upon the validity of the patent from the United States under which plaintiff claims title, and which was denied by the defendants. The Circuit Court for the district of California, therefore, had jurisdiction of the case as one arising under the Constitution and laws of the United States within the meaning of the act of March 3, 1875, 18 U. S. Stat. at L. 470.

DUNTON *v.* MUTH (45 Fed., 390.)

[Syllabus.]

"In an action in ejectment, where it appears that both parties claim under deeds from the trustee holding the legal title of a townsite on public lands, under the provisions of Rev. Stat. U. S., sec. 2387, and both claim to be *cestuis qui trustent* under the statute, the case is removable, as involving a federal question."

OPINION.

"It was decided in Water Co. v. Keyes, 96 U. S., 199, that facts showing the case is one arising under the Constitution or laws of the United States should be stated, and not legal conclusions; or, in other words, it is not sufficient for a party in his petition for removal to allege that the case is one that arises under the Constitution and laws of the United States, or under any specific law. The application in this case, however, sets forth that both parties claim under deeds from the trustee created by said section 2387 of Revised Statutes U. S., and that both claims to be *cestui qui trustent* under said statute. In this case the predecessors of one of the parties to this action, or the other party, must have been the one for whom the trustee provided for in said section received title to said premises;

which one, will depend upon the proper construction of said statute. In the case of Van Allen v. Railroad Company, 3 Fed. Rep., 545., it appears that the plaintiff claimed a town lot, and in the answer the defendant alleged the town lots were held by him under the provision of the townsite-act of Congress, and that he never had possession, and his claim under said act of Congress was fraudulent and void, and it was held the case involved a federal question. In the case of Choens v. Virginia, 6 Wheat., 264, it was held:

'A case in law or equity consists of the right of one party as well as of the other, and may truly be said to arise under the Constitution or a law of the United States, whenever its correct decision depends on the construction of either.'

"I feel that the correct determination of this case depends upon the construction of said section 2387, and that the petition states facts sufficient to show this.

"The fact that a judgment in the state court in an action involving a contest between mining claims is *res judicata* of the questions litigated in an action removed to the federal court, does not deprive such court of jurisdiction, as a contest between mining claims necessarily involves a consideration of the laws of the United States as to the location and the effect of end lines and side lines on the rights to the mineral veins and lodes, and, as the evidence whereby these things are proved, whether direct or through estoppel by some act of the party, or by a judgment of a court, does not remove consideration of the laws as elements of decision.

"A contest between mining claims necessarily involves a consideration of the laws of the United States. These laws prescribe how the locations shall be made, and the effect of end lines and side lines and the rights to the mineral veins and lodes. The evidence by which these things are proved, whether direct or through the estoppel of some acts of the parties, or by a judgment of a court, does not remove consideration of the laws as elements of decision.

"Con. Wyoming Mining Co. v. Champion Mining Co., 62 Fed., 945.

"A suit at law or in equity may be said to present a federal question so as to come within the jurisdiction of the courts of the United States, when it involves a controversy as to the validity, interpretation or application of the acts of Congress relating to the public lands, such as those regulating the acquisition and disposition of homesteads, pre-emption claims, town sites, mining claims and the like. Thus, a suit in which the complaint sets up an entry of public land by the plaintiff, and the subsequent issue of the patent, and seeks to establish an interest in the land during the interval by an application of the doctrine of relation, is a case of federal cognizance, since the determination of the applicability of such doctrine to the case requires

the construction of the federal statutes, and a consideration of the effect of acts thereunder.

"Where one of the adverse parties in an action of ejectment, or other suit concerning land, sets up and relies upon a title derived by him under the laws of the United States, and the other party denies the validity of the patent or grant relied upon, the issue thus formed arises under the acts of Congress, and brings the case within the jurisdiction of the federal courts. A suit to enforce a contract for the sale of land, brought by the vendor, claiming title under a grant by act of Congress, against the purchaser and his alienee, the latter contesting plaintiff's claim under such act, presents a case cognizable by the federal courts. And the same is true of an action upon an adverse proceeding to prevent the issuance of a patent to a mining claim.

"In the next place, where the two parties claim adversely to each other, and each bases his claim on a title alleged to have been derived under a law of the United States, each necessarily disputing the validity of the other's title, a federal question is raised, and the national courts will have jurisdiction of the controversy. This is the case, for example, where the suit involves a contest between a prior patent and a subsequent patent to the same land, the authority of the land department to issue the later patent being disputed, or where the contest is between a title acquired under the homestead law and a title founded on a patent, or where two corporations claim title to the same land under different acts of Congress, and the decision depends upon the construction given to those acts, or where the dispute is between adverse mining claims, and the interpretation of the laws regulating such claims is involved. So, the federal courts will have jurisdiction of a bill for an injunction to restrain a railroad company from extending its road across land belonging to the United States, and to which the complainant claims to have an equitable title as a pre-emptor, where the question in dispute is whether the complainant has a right to the land under the laws of the United States.

"But it has been held that, where it appears, in ejectment, that both parties claim under deeds from a trustee holding the legal title of a town site on public land, under the provisions of the act of Congress, and both claim to be *cestuis que trustent* under the statute, the case is removable as involving the federal question.

"Black's Dillon on Removal of Causes, Sec. 118."

Citing numerous cases.

The statutes of the United States constituting the mining code, and adopted May 10, 1872, together with the amendment of 1881, referred to,

undertake to make a disposition of the public mineral domain of the United States, to declare what is public mineral domain, to grant and define the right of citizens, and those who have declared their intention to become citizens, to enter upon and prospect the public domain, to locate mining claims thereon, and purchase the title thereto, from the United States government. They define also the several acts of discovery and location, and define the rights which are acquired thereby. They make provision for legislation by the states, and for regulations by the miners, all of which are made only by virtue of the authority thus conferred by the United States, and must in nowise be in conflict therewith. They then make provisions for land offices and the proceedings therein. They also make provisions for the institution of suits which could not be instituted but for this permission, and hence lode claimants have the right to bring actions like the one now in question only because these statutes expressly grant that power. They also make provision for an adjudication, in the trial of every adverse case, of the rights not only of the litigants between themselves, but as against the United States.

The title remains, throughout the suit, in the United States, and the suit is a proceeding for the information of the officers of the United States, to guide them in their disposition of the land, and for this reason alone, an adverse suit undoubtedly involves a federal question, especially as the Supreme Court of the United States has held that, even after the United States, had passed title, a

contest over the title of claims under various federal laws involves a federal question and gives federal jurisdiction.

From all this, it follows that this action is authorized by, arises out of, is brought under, and must be controlled by federal legislation. While different reasons are given by the courts for maintaining federal jurisdiction in the numerous cases outside of adverse suits, which we have cited, all of these reasons and causes are united and exist in adverse suits.

See U. S. Revised Statutes, sections 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326 (amendment, March 3, 1881), 2327, 2328, 2329 and 2335.

From the citations we have made and the extracts we have presented from numerous decisions, it appears that the courts familiar with adverse suits, and the questions which necessarily arise and must arise in their progress, have held and hold that an adverse suit is one arising under the laws of the United States, and, therefore, cognizable in the federal courts. When it is recalled, as we have hereinabove stated, that the right to bring the suit, the time within which it shall be brought, the purposes for which it is instituted, and the effect of the judgment rendered in it, are all solely for the purpose of enlightening and aiding the land department of the United States in the disposition of the public mineral domain, and that these suits are authorized, controlled, and their effect determined solely by federal statutes, it would seem that the jurisdiction over them by federal courts as "courts

of competent jurisdiction" is absolutely established.

The United States statutes, cited *supra*, define what must be done in order to make a location; they further provide the steps which must be taken in the effort to purchase a lode mining claim from the government of the United States. Among these provisions, and of essential and material character, as indicated by the statutes and as held by the courts, are the application to the surveyor general, publication of notice, institution of suit, and trial thereof with due diligence. Added to all these provisions is one of equal concern and importance, which requires that the jury shall not only determine the controversy between the plaintiff and defendant in an adverse suit, but shall also say, by their verdict, whether or not either the plaintiff or the defendant has a right to the land as against the government of the United States.

The United States Circuit Court, under the rules, principles, and decisions we have invoked, had jurisdiction. The order, therefore, dismissing the case, was error, and the ruling of the court below should be reversed.

The question presented is one of importance; for its decision will determine the right of a litigant to have a federal court pass upon the acquisition of title to land from the government, wherein all the proceedings and decisions are authorized and must be controlled by federal legislation.

The reasoning of the courts uniformally holding jurisdiction to exist, seems so clear and cogent

that we have not sought to add thereto. With the single exception of the decision of the District Judge of Colorado, the federal courts have invariably held that in adverse cases the federal court has jurisdiction. We can but feel that the opinions of these judges, brought so directly in contact with the interpretation of these statutes, and the trials under them, ought to be of great weight.

CHARLES J. HUGHES, JR.,

Attorney for Plaintiff in Error.